

Bank of New York Mellon,)	No. CV 11-1433-PHX-GMS (JRI)
Plaintiff,)	
vs.)	ORDER
Rae Ribadeneira, et al.,)	
Defendants.)	

Plaintiff Bank of New York Mellon commenced this action for forcible detainer in Maricopa County Superior Court on July 30, 2010 against Defendants Rae Ribadeneira and Doe occupants I through X, case# CV2010-94820. The address of the real property at issue is 10632 East Blue Sky Road, Scottsdale, Arizona 85262 (the Property). On July 19, 2011, Christopher Stoller, who is and was an inmate in the Lake County Jail in Waukegan, Illinois, removed this case from state court and has filed an application to proceed *in forma pauperis* on this District's court-approved form for use by incarcerated persons.¹ The Court will grant Christopher Stoller's *in forma pauperis* application and, for the reasons discussed below, will

¹ Christopher Stoller previously commenced a case in federal court, Stoller v. Bank of New York Mellon, No. CV11-1105-PHX-GMS, concerning the same property and issues. Because he failed to use this District's approved form for incarcerated persons to seek leave to proceed *in forma pauperis*, the Court denied his request in that case with leave to pay the fee or to file the approved form within 30 days. Instead, Stoller filed an interlocutory appeal, which remains pending.

1 remand this case to state court.

2 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

3 Stoller's Application to Proceed *In Forma Pauperis*, doc. 19, will be granted.² 28
4 U.S.C. § 1915(a). Stoller must pay the statutory filing fee of \$350.00. 28 U.S.C.
5 § 1915(b)(1). The Court will assess an initial partial filing fee of \$120.00. The remainder
6 of the fee will be collected monthly in payments of 20% of the previous month's income each
7 time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will
8 enter a separate Order requiring the appropriate government agency to collect and forward
9 the fees according to the statutory formula.

10 **II. Background**

11 As noted above, Mellon commenced this case in state court for forcible detainer on
12 July 30, 2010 Defendants Rae Ribadeneira and Doe occupants I through X, case# CV2010-
13 94820.

14 On August 9, 2010, Stoller removed this case from state court to the District Court for
15 the District of Northern Illinois. See Bank of New York Mellon v. Ribadeneira, No.
16 CV2010-04991.³ On September 30, 2010, that court granted Mellon's motion to remand
17 because Stoller was not a defendant, 28 U.S.C. § 1441(a), and the Northern District of
18 Illinois was not the appropriate venue. Id., Order filed Sept. 30, 2011, doc. 20.
19 Subsequently, the Seventh Circuit Court of Appeals dismissed Stoller's appeal. Id., No.
20 10-3295 (7th Cir. Mar. 17, 2011). On May 17, 2011, *Leo* Stoller (Leo), who is Christopher's
21 brother, again removed the case to federal court in this District. See Bank of New York
22 Mellon v. Ribadeneira, No. CV11-0982-PHX-FJM. On July 8, 2011, Judge Martone
23 remanded this case back to state court based on the lack of subject matter jurisdiction. Id.,
24

25 ² Christopher Stoller states that there will be a 60-90 day delay before he can provide
26 a certified six-month account statement. The Court will grant him leave to proceed *in forma*
27 *pauperis* subject to the submission of a six month account statement.

28 ³ See <https://ecf.ilnd.uscourts.gov/doc1/06718227863> (last visited on Aug. 10, 2011).

1 doc. 27.

2 On July 19, 2011, Christopher Stoller (hereafter, Stoller), filed a document captioned
3 “Notice of Filing Notice of Removal and Answer and Pauperis Petition” removing the case
4 from state court with a “Motion for Permission to Appeal *In Forma Pauperis*.”⁴ (Doc. 1, 2.)
5 The next day, Stoller filed a corrected notice of removal and answer and a motion/petition
6 for criminal contempt. (Doc. 6, 7.) On July 26, 2011, Plaintiff Bank of New York Mellon
7 (Mellon) filed a motion to remand to state court and for a restraining order “preventing
8 further vexatious litigation” by Stoller and sanctions for wrongful removal pursuant to Rule
9 11 of the Federal Rules of Civil Procedure. (Doc. 8 at 1.) On July 29, 2011, Stoller filed a
10 second corrected notice of removal. (Doc. 10.) On August 1, 2011, Stoller filed a motion
11 for a temporary restraining order; a motion to correct caption; and a motion to disqualify
12 counsel, to appoint a guardian ad litem, and to appoint counsel to represent him. (Doc. 12,
13 13, 15.) On August 3, 2011, Stoller filed a motion for extension of time to seek counsel and
14 to file a response to Plaintiff’s motion to remand. (Doc. 17.)

15 **III. Removal**

16 A “defendant” may remove a civil action brought in state court over which the federal
17 court would have original jurisdiction. 28 U.S.C. § 1441(a). That is, a civil action that could
18 have originally been brought in federal court may be removed from state to federal court.⁵

20 ⁴ Lower federal courts lack jurisdiction to review state court decisions, and state court
21 litigants may only obtain federal review by filing for a writ of certiorari in the Supreme Court
22 of the United States. Mothershed v. Justices of the Supreme Court, 410 F.3d 602 (9th Cir.
23 2005) (citing Rooker v. Fid. Trust Co., 263 U.S. 413, 416 (1923) and D.C. Court of Appeals
24 v. Feldman, 460 U.S. 462, 486-87 (1983)). The “Rooker-Feldman” doctrine applies “to cases
25 of the kind from which it acquired its name: cases brought by state-court losers complaining
26 of injuries caused by state-court judgments rendered before the federal district court
proceedings commenced and inviting district court review and rejection of those judgments.”
Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005); see also
Mothershed, 410 F.3d at 606.

27 ⁵ A federal court has original jurisdiction “of all civil actions arising under the
28 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Federal district

1 Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). However, courts strictly construe the
2 removal statute, 28 U.S.C. § 1441, against removal jurisdiction and federal jurisdiction “must
3 be rejected if there is any doubt as to the right of removal in the first instance.” Gaus v.
4 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). In addition, the law of the case
5 doctrine applies to a successive removal by the same party on the same grounds where
6 nothing of significance has changed since the prior removal. Midlock v. Apple Vacations
7 West, Inc., 406 F.3d 453, 457 (7th Cir. 2005); Benson v. SI Handling Syst., Inc., 188 F.3d
8 780, 783 (7th Cir. 1999) (citing Christianson v. Colt Indust. Operating Corp., 486 U.S. 800,
9 816-17 (1988).); see Amoche v. Guarantee Trust Life Ins. Co., 556 F.3d 41, 53 (1st Cir.
10 2009) (after a case has once been remanded following removal, it may not be removed again
11 unless subsequent circumstances bring a previously unremovable case within the removal
12 jurisdiction of federal courts); Zufelt v. Isuzu Motors America, L.C.C., 727 F.Supp.2d 1117,
13 1122 (D. N.M. 2009) (after a case has once been remanded following removal, it may not be
14 removed again absent a change in circumstances brought about by voluntary action by the
15 plaintiff); Jordan v. Equity Group Eufaula Div., LLC, 664 F. Supp.2d 1246 (M.D. Ala.
16 2009); De La Sancha v. Taco Bell of America, Inc., No. CV08-81325, 2008 WL 5111331,
17 at *2 (S.D. Fla. 2008); Barahona v. Orkin, No. CV08-04634, 2008 WL 4724054, at *2 (C.D.
18 Cal. Oct. 21, 2008); see also Brown v. Jevic, 575 F.3d 322, 328 (3d Cir. 2009); Johnson v.
19 America Online, Inc., 280 F. Supp.2d 1018, 1022 (N.D. Cal. 2003).

20 As noted by the Illinois District Court, Stoller is not a “defendant” in this case.
21 Indeed, despite the pendency of this case for more than a year, *and* his previous removal of
22 this action from state court resulting in the previous remand, Stoller has not sought to
23 intervene in this case. Moreover, Stoller again removed this case following remand on the
24 same grounds as previously and despite the absence of any significance change. Because

25
26
27 courts also have original jurisdiction of “all civil actions where the matter in controversy
28 exceeds the sum or value of \$75,000, exclusive of interest and costs,” and is between citizens
of different States. 28 U.S.C. § 1332.

1 Stoller is not a defendant in this action and in accordance with the doctrine of law of the case,
2 this case will be remanded to state court and the pending motions denied.

3 **IT IS ORDERED:**

4 (1) Christopher Stoller's Application to Proceed *In Forma Pauperis* is **granted**.
5 (Doc. 19.)

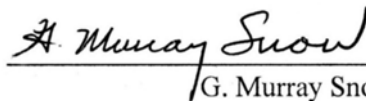
6 (2) As required by the accompanying Order to the appropriate government agency,
7 Christopher Stoller must pay the \$350.00 filing fee and is assessed an initial partial filing fee
8 of \$120.00.

9 (3) The remaining pending motions filed in this Court are **denied**. (Doc. 2, 7, 8,
10 12, 13, 15, and 17.)

11 (4) This action is **remanded** to the Maricopa County Superior Court.

12 (5) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.
13 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of this
14 decision would not be taken in good faith.

15 DATED this 17th day of August, 2011.

16
17 

18 G. Murray Snow
United States District Judge
19
20
21
22
23
24
25
26
27
28